

VIOLET MARIE WILLIAMS,)
)
Plaintiff,)
)
v.) No. 4:09CV1337 CDP
)
AT&T, et al.,)
)
Defendants.)

This matter is before the Court upon the motion of Violet Williams for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

“Although the statute of limitations is an affirmative defense, a district court may properly dismiss an in forma pauperis complaint under 28 U.S.C. § 1915[] when it is apparent the statute of limitations has run.” Myers v. Vogal, 960 F.2d 750, 751 (8th Cir. 1992).

The Complaint

Plaintiff brings this action under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (the “ADA”). Plaintiff alleges that her employer mistreated her in 2003 because she was perceived as having a mental disability. Plaintiff claims that she was arrested while at work on October 24, 2003. Plaintiff says she was unfairly terminated from her employment on August 12, 2004.

Plaintiff filed a charge of discrimination with the EEOC on August 10, 2009. The EEOC dismissed the charge the same day because it was not timely filed.

Discussion

As a prerequisite to filing a claim under the ADA, a plaintiff must file with the EEOC a charge of discrimination within 180 days of the alleged discriminatory act. 42 U.S.C. §§ 2000e-5(e)(1), 12117(a). Plaintiff filed her charge of discrimination four-and-one-half years after the limitations period ended. As a result, the complaint will be dismissed pursuant to 28 U.S.C. § 1915(e). Myers, 960 F.2d at 751.

Accordingly,


IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel [Doc. #4] is **DENIED** as moot.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 1st day of September, 2009.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE